

**Kochevar Enterprises, Inc. and Tom Caldwell. Case
27-CA-7030**

June 29, 1981

DECISION AND ORDER

Upon a charge filed on November 26, 1980, by Tom Caldwell, an Individual, herein called the Charging Party, and duly served on Kochevar Enterprises, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 27, issued a complaint on December 17, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on or about November 21, 1980, Respondent discharged Tom Caldwell, an employee at its Leadville, Colorado, place of business, because of said employee's protected concerted activities, including the preparation and circulation of an employee petition, and at all times since has failed and refused, and continues to fail and refuse, to reinstate this employee. The complaint also alleges in substance that on or about December 9, 1980, Respondent, through its president, Bernie Kochevar, has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, specifically by interrogating unnamed employees about their and other employees' protected concerted activities. Respondent failed to file an answer to the complaint.

On April 27, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 1, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause. However, on May 13, 1981, the Board refused to accept the response since Respondent had failed to furnish to the Board proof of service of the response on the other parties involved in this matter. Subsequently, upon Respondent's failure to furnish such proof within 5 days of its letter of May 13, 1981, the Board rejected and returned Respondent's documents.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that, unless an answer to the complaint was filed within 10 days of service thereof, all of the allegations in the complaint would be deemed to be true and could be so found by the Board. As noted above, Respondent has failed to file an answer to the complaint and, although an attempt was made to file a response to the Notice To Show Cause, such attempt was rejected by the Board due to Respondent's failure to provide the Board with proof of service of the response on the other parties involved in this matter.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true. We shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT**I. THE BUSINESS OF RESPONDENT**

Respondent is, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Colorado, and maintains its principal office and place of business at Leadville, Colorado. It is engaged in the business of land survey. Respondent, in the course and conduct of its business operations, annually provides services valued in excess of \$50,000, directly to other business enterprises, which sell and ship goods and materials valued in excess of \$50,000 annually from locations in Colorado to locations outside Colorado.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE CHARGING PARTY

Tom Caldwell is an employee within the meaning of Section 2(3) of the Act.

III. THE UNFAIR LABOR PRACTICES

The 8(a)(1) Violations

On or about November 21, 1980, Respondent discharged Tom Caldwell, an employee at its Leadville, Colorado, place of business, and at all times since has failed and refused, and continues to fail and refuse, to reinstate this employee because he engaged in concerted activities protected by the Act, including the preparation and circulation of an employee petition.

On or about December 9, 1980, Respondent, acting by and through Bernie Kochevar, its president, interrogated employees about their and other employees' protected concerted activities.

We find that, by the acts and conduct set forth above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them under Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Kochevar Enterprises, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Tom Caldwell is an employee within the meaning of Section 2(3) of the Act.

3. By discharging and refusing to reinstate Tom Caldwell, because he engaged in concerted activities protected by the Act, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

4. By interrogating employees about their and other employees' protected concerted activities, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Kochevar Enterprises, Inc., Leadville, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their and other employees' protected concerted activities.

(b) Discharging or refusing to reinstate employees because they engage in protected concerted activities within the meaning of the National Labor Relations Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer immediate and full reinstatement to Tom Caldwell to his former job or, if such job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered by payment to him of a sum equal to the amount he normally would have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement, less net earnings in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with in-

terest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).¹

(b) Post at its Leadville, Colorado, facility copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

¹ See generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT discharge or refuse to reinstate employees because they engage in protected concerted activities within the meaning of the National Labor Relations Act.

WE WILL NOT interrogate employees about their or other employees' protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Tom Caldwell to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings suffered as a result of being discharged.

KOCHEVAR ENTERPRISES, INC.